

Federal Regulations (hereinafter, "CFR") speaks for itself.

17. Denied as to the first and last sentences. Admitted as to the description of number portability contained in sentence 2. The balance of Paragraph 17 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

18. Denied.

19. Denied as to sentences 1, 4 and 5. The balance of Paragraph 19 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 and the referenced Federal Communications Commission (hereinafter, "FCC") order and rules speaks for themselves

20. Denied.

#### JURISDICTION AND VENUE

21. AT&T's statement of jurisdiction is a legal conclusion to which no response is required.

22. AT&T's statement of venue is a legal conclusion to which no response is required.

23. AT&T's statement of the appropriate vicinage for this matter is a legal conclusion to which no response is required.

#### BACKGROUND

24. Admitted that BA-NJ provides local exchange and exchange access services in most of New Jersey and that its service area contains the majority of residential and business subscribers in New Jersey. Defendants are without knowledge or information sufficient to form a belief as to the balance of the

allegations contained in Paragraph 24 and leave Plaintiffs to their proofs.

25. As to sentence 1, admitted that New Jersey consumers may choose among several providers of long distance service, and that within BA-NJ's service territory most long distance calls originate and terminate on BA-NJ's network. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in the balance of Paragraph 25 and leave Plaintiffs to their proofs.

26. Paragraph 26 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

27. Paragraph 27 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

28. Paragraph 28 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

29. Admitted that the FCC adopted its First Report and Order, In Re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC Order No. 96-325 (hereinafter, "First Report and Order") on August 1, 1996 and released the First Report and Order on August 8, 1996. The referenced sections of the Telecommunications Act of 1996, First Report and Order and decision of the United States Court of Appeals for the Eighth Circuit speak for themselves.

The balance of Paragraph 29 expresses legal conclusions to which no response is required.

30. Paragraph 30 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

31. Paragraph 31 expresses legal conclusions to which no response is required. In addition, the Telecommunications Act of 1996 speaks for itself.

32. The Telecommunications Act of 1996 speaks for itself.

33. The Telecommunications Act of 1996 speaks for itself.

34. Admitted.

35. Admitted that on December 8, 1995, prior to the passage of the Telecommunications Act of 1996, the Board initiated a generic investigation in Docket No. TX95120631 to determine whether or not to permit local exchange competition in New Jersey (hereinafter, the "Local Competition Proceeding"). Admitted that on June 20, 1996, the Board issued the referenced Decision and Order in the Local Competition Proceeding. The June 20, 1996 Decision and Order speaks for itself.

36. Admitted.

37. Admitted that BA-NJ filed a response to AT&T's arbitration petition. Said response speaks for itself.

38. Admitted that on August 15, 1996, the Board issued its Arbitration Procedures Order. The Arbitration Procedures Order speaks for itself. Admitted that the Board appointed retired Superior Court Judge Paul Thompson as arbitrator in the AT&T/BA-

NJ arbitration which was given Docket Nos. TO96070519 and TO96070523.

39. Admitted that on or about August 27, 1996, AT&T moved for discovery in the AT&T/BA-NJ arbitration proceeding. With regard to the balance of Paragraph 39, Defendants state that all submissions in the AT&T/BA-NJ arbitration proceeding speak for themselves.

40. Admitted that in the AT&T/BA-NJ arbitration proceeding a conference was held on September 4, 1996. With regard to the balance of Paragraph 40, Defendants state that the record of the AT&T/BA-NJ arbitration proceeding speaks for itself.

41. Defendants state that the record of the proceedings challenging the FCC's First Report and Order which were consolidated in the Eighth Circuit Court of Appeals speaks for itself.

42. Defendants state that the record of the AT&T/BA-NJ arbitration proceeding speaks for itself.

43. Admitted that in the AT&T/BA-NJ arbitration proceeding hearings were held in September and October 1996. Defendants state that the record of the AT&T/BA-NJ arbitration proceeding speaks for itself. With regard to the last sentence in Paragraph 43, Defendants are without knowledge or information sufficient to form a belief as to the allegations contained therein and leave Plaintiffs to their proofs.

44. The referenced Eighth Circuit Court of Appeals Order speaks for itself.

45. Defendants state that the record of the AT&T/BA-NJ arbitration proceeding speaks for itself.

46. Defendants state that the record of the Local Competition Proceeding speaks for itself.

47. Defendants state that the record of the Local Competition Proceeding speaks for itself.

48. Admitted that on November 8, 1996, the arbitrator in the AT&T/BA-NJ arbitration proceeding issued his decision. That decision speaks for itself. With regard to AT&T's reliance on the arbitrator's decision, Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in sentence 6 of Paragraph 48 and leave Plaintiffs to their proofs.

49. Admitted that on November 19, 1996, BA-NJ filed a Motion for Resolution of Arbitration Between AT&T and BA-NJ with Interim Rates and For Expedited Relief. Said Motion speaks for itself.

50. Admitted.

51. Admitted that hearings on the resale and interconnection issues in the Board's Local Competition Proceeding began in October 1996 and ended in January 1997. Admitted that on January 16, 1997, the Board requested comment on the possibility of amending its Arbitration Procedures Order. Defendants state that the Board Secretary's letter requesting comments speaks for itself. Admitted as to sentence 3 of Paragraph 51.

52. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 52 and leave Plaintiffs to their proofs.

53. Admitted that at its July 17, 1997 public agenda meeting, the Board adopted rates in the Local Competition Proceeding. The transcript of this meeting and the Board's Generic Decision and Order which memorializes the decision taken at this meeting speak for themselves.

54. Defendants are without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 54 and leave Plaintiffs to their proofs.

55. Admitted that on July 25, 1997, AT&T submitted a document, unilaterally signed only by AT&T, for the Board's review which it characterized as an interconnection agreement between itself and BA-NJ. Admitted that on August 5, 1997, BA-NJ submitted another document for Board review which was not executed by either party. Admitted that on August 5, 1997, AT&T and BA-NJ submitted a joint letter related to their July 25, 1997 and August 5, 1997 submissions. These letters and submissions speak for themselves.

56. Admitted that AT&T and BA-NJ submitted briefs and reply briefs in support of their respective versions of the interconnection agreement.

57. With regard to the Board's September 9, 1997 agenda meeting, Defendants state that the transcript of that meeting, the Generic Decision and Order which memorialized the Local

Competition Proceeding decisions made at that meeting, and the Board's September 18, 1997 Order in I/M/O Interconnection Filing of AT&T Communications of New Jersey Inc. and I/M/O Interconnection Filing of Bell Atlantic-New Jersey Inc., Docket Nos. TO96070519 and TO96070523, speak for themselves.

58. Admitted that on September 15, 1997, AT&T and BA-NJ executed an interconnection agreement and submitted it to the Board with a joint application for approval. Regarding the allegations contained in sentences 2 and 3 of Paragraph 58, AT&T's September 15, 1997 letter to the Board speaks for itself.

59. With regard to the Board's October 8, 1997 public agenda meeting, Defendants state that the transcript of that meeting and the Board's December 22, 1997 Interconnection Order memorializing that meeting speak for themselves.

60. Admitted.

61. Admitted that on December 2, 1997, the Board issued its Generic Decision and Order memorializing the decisions made in the Local Competition Proceeding at its July 17, 1997 and September 9, 1997 public agenda meetings. The Board's Generic Decision and Order speaks for itself.

62. Admitted.

#### THE AGREEMENT

63. Denied.

64. Denied as to sentence 1. Regarding sentence 3, Defendants admit that the arbitrator issued his decision on November 8, 1996. Regarding sentence 5, Defendants admit that

the arbitrator set permanent rates. Regarding the balance of Paragraph 64, Defendants are without knowledge or information sufficient to form a belief as to the allegations contained therein and leave Plaintiffs to their proofs.

65. Defendants admit that the Board rendered decisions at its public agenda meetings of July 17, 1997, September 9, 1997 and October 8, 1997. The transcripts of those meetings and the Generic Decision and Order and the Interconnection Order, which memorialize those decisions, speak for themselves.

66. Denied.

67. Denied.

68. Denied as to sentences 3 and 4. As to sentence 1, referenced sections of the Telecommunications Act of 1996 speak for themselves. Regarding the balance of Paragraph 68, the Board's Orders speak for themselves.

69. As to sentence 1, BA-NJ's cost models and rate submissions speak for themselves. Regarding the balance of Paragraph 69, the Board's Orders speak for themselves.

70. Regarding Paragraph 70, BA-NJ's cost models speak for themselves.

71. Denied.

72. Regarding the Board actions referenced in Paragraph 72, the Generic Decision and Order speaks for itself. Denied as to the balance of Paragraph 72.

73. Regarding the Board actions referenced in Paragraph 73, the Generic Decision and Order speaks for itself. Denied as to



the balance of Paragraph 73.

74. Denied.

75. The referenced section of the CFR and referenced paragraph in the First Report and Order speak for themselves. The balance of Paragraph 75 is denied.

76. Denied as to sentence 1. As to sentence 2, the Board's Generic Decision and Order speaks for itself.

77. Paragraph 77 expresses legal conclusions to which no response is required. Defendants also state that the referenced sections of the Telecommunications Act of 1996, the FCC's First Report and Order, and the Board's Generic Decision and Order speak for themselves. The balance of Paragraph 77 is denied.

78. Paragraph 78 expresses legal conclusions to which no response is required. Defendants also state that the referenced sections of the Telecommunications Act of 1996, the FCC's First Report and Order, and the Board's Generic Decision and Order speak for themselves. The balance of Paragraph 78 is denied.

79. Denied.

80. Paragraph 80 expresses legal conclusions to which no response is required. The Telecommunications Act of 1996 speaks for itself.

81. Paragraph 81 expresses legal conclusions to which no response is required. The Telecommunications Act of 1996 speaks for itself.

82. The Board's Generic Decision and Order speaks for itself. The balance of Paragraph 82 is denied.

83. Denied.

84. Admitted that the Board's Generic Decision and Order did not grant AT&T the access to BA-NJ's directory assistance database that it desired. The Board's Generic Decision and Order speaks for itself. However, Defendants note that in its May 15, 1998 Order on Reconsideration, the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself. The balance of Paragraph 84 expresses legal conclusions to which no response is required.

85. The referenced section of the Telecommunications Act of 1996 speaks for itself. The Board notes that in its May 15, 1998 Order on Reconsideration, the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself. The balance of Paragraph 85 expresses legal conclusions to which no response is required.

86. The Telecommunications Act of 1996, the FCC's First Report and Order, and the Board's Generic Decision and Order speak for themselves. To the extent that Paragraph 86 expresses legal conclusions, no response is required. The Board notes again that in its May 15, 1998 Order on Reconsideration, the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory

assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself.

87. The referenced sections of the Telecommunications Act of 1996 and the CFR speak for themselves. The Board's Generic Decision and Order speaks for itself. The Board notes again that in its May 15, 1998 Order on Reconsideration, the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself. The balance of Paragraph 87 expresses legal conclusions to which no response is required.

88. Denied.

89. Admitted as to the first and second sentences of Paragraph 89. To the extent that the last sentence reflects AT&T's interpretation of the Telecommunications Act of 1996, CC Docket No. 95-116, or FCC rules or orders, this sentence expresses legal conclusions to which no response is required.

90. Denied as to sentence 1. The balance of Paragraph 90 contains AT&T's interpretation of the Board's Generic Decision and Order, which speaks for itself.

91. The referenced sections of the Telecommunications Act of 1996, CFR and FCC Orders speak for themselves. To the extent that Paragraph 91 expresses legal conclusions, no response is required.

92. Paragraph 92 expresses legal conclusions to which no response is required.

93. Denied.

94. The-referenced sections of the Telecommunications Act of 1996, and FCC order speak for themselves. To the extent that Paragraph 94 expresses legal conclusions, no response is required.

95. Regarding sentence 1 and 2, the transcript of the July 17, 1997 Board public agenda meeting and the Board's Generic Decision and Order speak for themselves. Regarding sentence 3, Defendants are without knowledge or information sufficient to form a belief as to the allegations contained therein and leave Plaintiffs to their proofs. Denied as to sentence 4.

96. Regarding Paragraph 96, the FCC's orders and rulings speak for themselves.

97. Denied.

98. Regarding Paragraph 98, the FCC's First Report and Order speaks for itself.

99. The Telecommunications Act of 1996 speaks for itself.

100. Denied. The Board's Generic Decision and Order and the FCC's First Report and Order speak for themselves.

COUNT ONE

101. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 100 of the Amended Complaint as if fully set forth herein.

102. Denied.

103. Denied.

104. Denied.

105. Paragraph 105 expresses legal conclusions to which no response is required.

106. Denied.

107. Denied.

#### COUNT TWO

108. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 107 of the Amended Complaint as if fully set forth herein.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

#### COUNT THREE

113. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 112 of the Amended Complaint as if fully set forth herein.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

#### COUNT FOUR

118. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 117 of the Amended Complaint as if fully set forth herein.

119. Admitted that the Board's Generic Decision and Order did not grant to AT&T the access to BA-NJ's directory assistance

database which it sought. The Board's Generic Decision and Order speaks for itself. However, Defendants note that by its May 15, 1998 Order on Reconsideration referenced in Paragraph 16 above, the Board discussed access to BA-NJ's directory assistance database at length, and reconsidered its decision regarding directory assistance database access. The Board's May 15, 1998 Order on Reconsideration speaks for itself. The balance of Paragraph 119 expresses legal conclusions to which no response is required.

120. Admitted that in its Generic Decision and Order the Board did not the Order access to BA-NJ's directory assistance database which AT&T sought. However, Plaintiff's Amended Complaint predates the Board's Order on Reconsideration, and is therefore misleading. On May 15, 1998, the Board reconsidered the directory assistance database portion of its Generic Decision and Order, and directed BA-NJ to provide the access which AT&T has requested. Specifically, the Board ordered

BA-NJ to furnish to competing providers nondiscriminatory access to directory assistance database information in readily accessible tape or electronic format in a timely fashion upon request with updates of the information on a daily basis.

[Order on Reconsideration, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunication Services, and I/M/O the Petition for Arbitration of Unresolved Issues Pursuant to section 252(e) of the Telecommunications Act of 1996, Docket Nos. TX95120631 and T096080621 (May 15, 1998) at 11].

Therefore, Count Four of AT&T's Amended Complaint should be

dismissed as moot.

121. Denied. As stated in Defendants' response to Paragraph 120, the Board has ordered that BA-NJ furnish the directory assistance database access which AT&T has requested, and Count Four of the Complaint should be dismissed as moot.

122. Denied. Count Four of the Complaint should be dismissed as moot.

#### COUNT FIVE

123. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 122 of the Amended Complaint as if fully set forth herein.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

#### COUNT SIX

128. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 127 of the Amended Complaint as if fully set forth herein.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

#### COUNT SEVEN

133. Defendants repeat their responses to the allegations contained in Paragraphs 1 through 132 of the Amended Complaint as

if fully set forth herein.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

AFFIRMATIVE DEFENSES

1. Counts One through Three and Five through Seven fail to express a claim upon which relief can be granted and should be dismissed.


2. Count Four is moot and should be dismissed.

3. The Court is without jurisdiction to reform the interconnection agreement between the AT&T and BA-NJ.

WHEREFORE, Defendants respectfully demand judgement dismissing the Complaint with prejudice and awarding them costs and fees and such other relief as the Court may deem just and reasonable.

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

AT&T COMMUNICATIONS OF NEW  
JERSEY, INC.

Plaintiff

v.

BELL ATLANTIC-NEW JERSEY, INC., and  
THE NEW JERSEY BOARD OF PUBLIC  
UTILITIES, an agency, and HERBERT H. TATE  
AND CARMEN J. ARMENTI, in their official  
capacities as Commissioners of the Board of  
of Public Utilities.

Defendants.

STATE OF NEW JERSEY DIVISION OF  
THE RATEPAYER ADVOCATE

Plaintiff-Intervenor

United States District Court  
District of New Jersey

Civil Action No. 97-5762 (JAG)

**STATEMENT OF MATERIAL  
FACTS FOR WHICH THERE  
EXISTS NO GENUINE ISSUE**

STATEMENT OF MATERIAL FACTS

In Conjunction with the Notice of Motion for Summary Judgment on Count 1 of the  
Amended Complaint, and in compliance with Rule 56 of the Federal Rules of Civil Procedure and

Local Rule 56.1, Local Rules of the United States District Court for the State of New Jersey District of Newark, Plaintiff-Intervenor, Division of the Ratepayer Advocate submits this Statement of Material Facts for which There Exists No Genuine Issue, which is part of the attached Certification of Heikki Leesment. The Plaintiff-Intervenor contends that there is no genuine issue as to the following material facts:

1. Bell Atlantic-New Jersey, Inc. (BA-NJ) is the incumbent monopoly provider of both local exchange and exchange access telephone services in most of the State of New Jersey. (See Amended Complaint of AT&T of New Jersey Inc. (AT&T) at ¶¶ 3 and 24; see also BA-NJ Answer, Counter Claim and Cross Claim, at ¶¶ 3 and 24; see also Answer of the New Jersey Board of Public Utilities, (Board) on behalf of the Board and its Commissioners at ¶¶ 3 and 24.)
2. On February 8, 1996, the Congress of the United States passed the Telecommunications Act of 1996, Public Law No. 104-104, 110 Stat. 56 (1996) (hereinafter the "Act of 1996".) which the President signed into law.
3. On March 1, 1996, AT&T requested interconnection negotiations with BA-NJ pursuant to § 252 (a) of the telecommunications Act of 1996. (See JA618-JA619; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 34.)
4. On June 20, 1996, after hearings which began in 1995, the Board issued an order in its generic local exchange competition proceeding (Docket No. TX95120631), (Generic Proceeding) initiated under state law just prior to the passage of the Act of

1996. The order stated that (1) the generally available terms and conditions that result from the generic proceedings will not supersede arbitrated terms and conditions or those contained in negotiated agreements, and (2) the generic terms and conditions (of the proceeding) shall be offered as guidelines for all entities who are not parties to either negotiated agreements or arbitrated determinations. (See Amended Complaint of AT&T at ¶ 35 and referenced Exhibit A; see also BA-NJ Answer, Counter Claim and Cross Claim and Answer of the Board on behalf of the Board and its Commissioners at ¶ 35.)

5. On July 15, 1996, AT&T petitioned the Board for arbitration of certain issues that AT&T and BA-NJ were not able to resolve through negotiation pursuant to section 252 (b) of the Act of 1996. (See JA4467-JA6893; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 36.)
6. On August 9, 1996, BA-NJ filed its response to AT&T's arbitration petition. (See JA6894-JA7100; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 37.)
7. On August 15, 1996, the Board issued another order, pursuant to its June 20, 1996 order, in which it re-affirmed its intent to establish generally available terms and conditions so as to avoid the need for negotiation or arbitration by carriers in the future for interconnection. (See Amended Complaint of AT&T at ¶ 38 and referenced exhibit B, at pp. 15-16; see also BA-NJ Answer, Counter Claim and Cross

Claim and Answer of the Board on behalf of the Board and its Commissioners at ¶ 38.)

8. From September 23, 1996 through October 15, 1996; extensive arbitrations were held, where former Judge Paul B. Thompson presided. Both AT&T and BA-NJ submitted evidence and testimony, where cross examination was permitted. Both parties filed post arbitration briefs summarizing the evidence and bases for their respective positions. (See JA9919-JA10048, JA10049-JA10180, and JA2069-2080.) BA-NJ ultimately chose not to submit any cost studies and relied exclusively on the FCC's default proxy rates, despite BA-NJ's participation in the arbitration proceedings where it challenged AT&T cost models. (See Amended Complaint of AT&T, BA-NJ Answer, Counter Claim and Cross Claim, and Answer of the Board on behalf of the Board and its Commissioners at ¶ 43.)
9. On October 22, 1996, BA-NJ filed a post arbitration brief, arguing denial of due process by relying on the use of the default cost values established by the FCC in lieu of submitting its own permanent costs studies. (See JA10049-JA10180.) AT&T responded that nothing had prevented BA-NJ from submitting their own cost studies during the arbitration. (See Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 45; see also JA2070-JA2071.)
10. On October 28, 1996, BA-NJ argued, in comments filed to the generic proceeding, that the arbitrated rates should be used as interim rates and that they should be superseded by the rates set in the generic proceeding. (See JA2081-JA2089; see also

Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 46.)

11. On November 1, 1996, the Board Counsel issued a letter to the parties stating that the 8<sup>th</sup> Circuit's stay order was limited. In that letter, counsel did not adopt BA-NJ's request to treat the arbitrated rates as interim rates. (See JA2576-2579; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 47.)
12. On November 8, 1996, the Arbitrator issued his decision resolving the disputed issues between AT&T and BA-NJ, finding that AT&T's cost model (with some modifications), properly calculated the forward-looking, economic costs of providing interconnection and network elements. Relying on this model, the Arbitrator set permanent rates for interconnection, unbundled elements, and wholesale discounts. The Arbitrator specifically rejected BA-NJ's claim that it did not have the time to perform the necessary cost study, stating that "the task could have been accomplished." (See JA324-JA338; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 48.) The Arbitrator adopted the Total Element Long Run Incremental Cost, (TELRIC). (See JA330-JA333.) After the decision, negotiation ensued for a detailed interconnection agreement incorporating the rates set by the Arbitrator. (See Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 48.)

13. On November 19, 1996, BA-NJ moved the Board to overturn the Judgment of Arbitrator. BA-NJ argued that the rates set in the arbitration should be replaced with the FCC's default rates on an interim basis and that permanent rates should be established in the generic proceeding. (See JA2708-JA2714; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 49.)
14. On January 7, 1997, BA-NJ withdrew its November 19, 1996 motion. (See JA3076; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 50.)
15. BA-NJ did not ask the Arbitrator to re-consider his decision after its issuance and BA-NJ did not object during the arbitration that either the AT&T rates, BA-NJ rates or the arbitrated rates if adopted must be rejected under § 252 (e) (2) (b) or that it would conflict with this section or violate the Act of 1996.
16. On January 16, 1997, the Board requested comments on whether it should amend its prior rulings concerning the independence of the arbitration and generic proceedings, and retroactively make the rates set in arbitrations, including the AT&T and BA-NJ arbitration, interim pending the outcome of the generic proceeding. (See JA3086; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 51.)
17. On July 15, 1997, BA-NJ and AT&T finalized the interconnection agreement. The

agreement contained the rates set by the arbitrator. (See Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 52.)

18. On July 17, 1997, the Board at a public agenda meeting, established the generic rates, which are higher than the rates ordered in the AT&T BA-NJ arbitration. (See Amended Complaint of AT&T at ¶ 53 and referenced Exhibit D, pp. 21, 80-98; see also BA-NJ Answer, Counter Claim and Cross Claim, and Answer of the Board on behalf of the Board and its Commissioners at ¶ 53.)
19. On July 23 and 25, 1997, BA-NJ stated that it would refuse to sign the arbitrated interconnection agreement unless the rates set in the arbitration were replaced with the rates set in the generic proceeding. (See Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 54.)
20. On July 25, 1997, AT&T executed and submitted for Board approval, per § 252 (e) of the Act of 1996, an interconnection agreement that incorporated the arbitration set-rates. (See JA3742-JA3746.) On August 5, 1997, BA-NJ submitted a second interconnection agreement (not executed by both sides) incorporating the rates set in the generic proceeding. (See JA3756-JA3761.) Both AT&T and BA-NJ jointly proposed a briefing schedule. Each agreed to accept and execute the agreement not rejected by the Board. All parties expressly reserved their rights to challenge the board's decision. (See JA3753-JA3755; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 55.)

21. On September 9, 1997, the Board (in the generic proceeding) ruled that the rates established in the arbitrated proceeding would be superseded by the rates established in the generic proceeding. Accordingly the Board (in the arbitration proceeding) directed the parties to submit a fully executed agreement reflecting the Board's decision to supersede the arbitration rates with the generic rates. (See Amended Complaint of AT&T at ¶ 57 and referenced Exhibit E and F; see also BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 57.)
22. On September 15, 1997, AT&T and BA-NJ executed BA-NJ's version of the interconnection agreement which included the generic rates. (See JA3794-JA4155.) AT&T, by letter dated the same date, informed the board that AT&T had executed BA-NJ's version only because the Board had ruled that generic rates would supersede the arbitrated rates and had effectively rejected AT&T's version of the interconnection agreement. AT&T specifically reserved the right to appeal the Board's rejection of the arbitrated rates and to challenge the rates set forth in the Agreement. (See JA4158-JA4160; see also Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 58.)
23. On October 8, 1997, the Board orally approved at a public meeting the BA-NJ version of the agreement. (See Amended Complaint of AT&T at ¶ 59 and referenced Exhibits G and H; see also BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 59.)



24. On November 24, 1997, AT&T filed a complaint in this Court naming BA-NJ and the Board, and the Commissioners as defendants. (See Amended Complaint of AT&T; BA-NJ Answer, Counter Claim and Cross Claim; and Answer of the Board on behalf of the Board and its Commissioners at ¶ 60.) On January 12, 1998 AT&T filed its Amended Complaint.
25. On December 2, 1997, the Board issued, in the Generic Proceedings, a written order memorializing the Board's decision made at the July 17, 1997, September 9, 1997 and October 8, 1997 open meetings, specifying for the first time a number of recurring and all of the non-recurring charges for unbundled network elements, setting forth the basis for its decision, including its rationale for superseding the arbitrated rates. (See Amended Complaint of AT&T at ¶ 61 and referenced Exhibit I; see also BA-NJ Answer, Counter Claim and Cross Claim and Answer of the Board on behalf of the Board and its Commissioners at ¶ 61.)
26. On December 22, 1997, the Board issued a written order confirming the approval of the agreement. (See Amended Complaint of AT&T at ¶ 62 and referenced Exhibit J; see also BA-NJ Answer, Counter Claim and Cross Claim and Answer of the Board on behalf of the Board and its Commissioners at ¶ 62.)